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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1982

DANIEL F. BLOCH

PETITIONER

v.

LODGE COMPTON,
RACHEL RIGGSBY
&
MOUNTAINEER PUBLISHING CO., INC.,

RESPONDENTS

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA

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QUESTIONS PRESENTED FOR REVIEW

1. Did the state courts decide important questions of federal law which have not been, but should be, settled by the Supreme Court of the United States?

a. Can obstruction of justice and damage to a whistle-blower occur if a media conspirator censors news which would expose the conspiracy he seeks to maintain?

b. May a media conspirator fraudulently create a public controversy against a private individual, make him a public figure, and then claim First Amendment immunity on the basis he is a public figure, a question that rises but is not answered in *Gertz v. Welch*?

c. Should a publisher lose his privilege if he engages in malicious censorship that departs substantially from the public record: is censorship *by* a publisher to cover up news adverse to him and his friends any less noxious than government censorship *of* a publisher?

d. Does the First Amendment privilege of free press imply an obligation on a publisher to advance society's interest in uninhibited, robust and wide-open debate on public issues; and not to censor adverse news damaging to himself and his friends, by deliberate, long-term hiding from the public of facts he would otherwise publish, in highly unreasonable conduct constituting an extreme departure from the standards of investigation and reporting ordinarily adhered to by responsible publishers?

2. Was the trial court's recollection of the testimony accurate, and supported by the record?

TABLE OF AUTHORITIES

Curtis Publishing Co. v. Walker
87 S Ct 1975 (1967) ..... Pages 6, 10, 12.

Gertz v. Welch
94 S Ct 2997 (1974) ..... Pages 1, 6, 7, 10.

Mills v. Kingsport Times News
D.C. Va. 4th Ct 475 F. Supp. 1005 (1979) ..... Pages 7, 9.

New York Times v. Sullivan
84 S Ct 710 (1964) ..... Pages 1, 6, 7, 10.

Time, Inc. v. Pape
91 S Ct 633 (1971) ..... Pages 6, 10.

OFFICIAL AND UNOFFICIAL COURT OPINIONS

JURY VERDICT:

"Daniel F. Bloch against Mountaineer Publishing Company, Lodge Compton and Rachel Riggsby: We the jury on issue joined find in favor of the plaintiff and assess his damages at One Hundred and Fifty Thousand Dollars. R. M. Beverly, Foreman."

TRIAL COURT:

"Now, the Court could have stricken the evidence at the conclusion of plaintiff's evidence. The Court did not see fit to do so and did not do so. The Court could have stricken the evidence at the conclusion of all the evidence. The Court did not see fit to do so.

"Instructions given are the law of the case.

"Federal statute would not be applicable to the libel suit here in this case.

"The Court is setting aside the verdict of the jury."

VIRGINIA SUPREME COURT:

"Finding no reversible error in the judgment complained of, the court refuses the petition for appeal in the above-styled case."

CONSTITUTIONAL PROVISIONS

The First Amendment to the Constitution provides:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble and to petition the government for redress of grievances."

The Seventh Amendment to the Constitution provides:

"In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States than according to the rules of common law."

STATEMENT OF THE CASE

1. Petitioner sued two individuals and their small-town newspaper (the only newspaper published in the county) alleging damage from cover up *and* libel. Petitioner alleged respondents conspired with local friends who own a privately-run orphanage to make a fair jury panel impossible, and were also responsible with the orphanage for having petitioner jailed on the false charge he 'abducted' two orphans to a circuit court so they could complain about child abuse at the orphanage. Petitioner alleged respondents tried to discredit petitioner's motive by censoring news favorable to petitioner and publishing a headline falsely stating petitioner's attorney had testified about illicit conduct by petitioner, and that the article accompanying the headline maliciously omitted facts which refuted the statement.

2. Petitioner alleged respondents knew the defamation was false because they carefully censored admissions of beatings by orphanage personnel and the boys' own testimony before several courts, and published the headline in reckless disregard of whether or not it was false, maliciously mis-quoting petitioner's attorney out of context.

3. Petitioner alleged respondents' long-time censorship of numerous facts adverse to their friends and favorable to petitioner (a policy they admitted sometimes practicing) was further proof of respondents' malice and reckless disregard of whether or not the defamation was false. Respondents could not refute petitioner's allegations that respondents had censored news over an eight year period that was damaging to the orphanage and favorable to petitoner.

4. Trial court denied respondents' motions to dismiss three times: before trial, at end of petitioner's evidence and again at the end of respondents' evidence, handing the case to the jury after carefully instructing them.

5. Jury found for petitioner and awarded him $150,000.00.

6. Trial court then set aside the verdict of the jury, claiming jury found evidence of libel without cause. Trial court confined its remarks to question of libel. It did not address petitioner's allegation of damage from respondents' eight-year cover-up in which they censored news of orphans' lawsuits alleging child abuse, which petitioner tried to expose.

7. Petitioner sought review by the Virginia Supreme Court, which found no reversible error and refused his petition for appeal without comment, without any findings of fact or conclusions of law, despite the jury's verdict for petitioner.

WHERE FEDERAL QUESTIONS WERE RAISED

1. Federal questions were raised by the trial court in its ruling setting aside the verdict of the jury. (Appx. 10.)

2. The trial court cited four cases decided by the Supreme Court of the United States that were not on point, and based its opinion primarily on *New York Times v. Sullivan, Curtis Publishing Co. v. Butts, Gertz v. Welch, and Time, Inc. v. Pape.* (Appx. 10.)

3. The Supreme Court of Virginia denied the petition for appeal without comment. (Appx. 13.)

BASIS FOR FEDERAL JURISDICTION

This petition to the Supreme Court of the United States is sought pursuant to 28 U.S.C. § 1257, which gives the Supreme Court jurisdiction to review a final judgment by the highest state court after entry of judgment.

In this case the highest state court is the Supreme Court of Virginia, which entered its final judgment on June 24, 1982, rehearing denied on September 9, 1982.

ARGUMENT

1. The spirit and intent of all the Supreme Court First Amendment decisions from *New York Times* to *Gertz* were to advance "society's interest in uninhibited, robust and wide-open debate on public issues." The various Court opinions recoil against any policy that might lead the press, fearing defamation suits, into self-censorship.

2. The corollary question of deliberate, malicious censorship by a publisher to hide the truth from the public has never been addressed by the Court.

3. Whenever there has been conflict between the states' right to enact laws against defamation and press freedom, the Court has found the latter must be paramount. Many justices have held that the public's right to know must be protected. Malicious censorship to hide the truth from the public is therefore logical evidence the publisher knew the defamatory material he printed was false. The concept is a sensible extension of the *New York Times* rule that requires proof the publisher knew the defamation was false or published it with reckless disregard of whether or not it was false.

4. The United States District Court for the Western District of Virginia found, "To be privileged the newspaper article must be an impartial and accurate account of the event as recorded in the public records. Verbatim accounts are not required, but the article must not constitute a substantial departure from the public record. So, if the departure is substantial, the privilege is lost, and malice is inferred from the publication of defamatory material." *Mills v. Kingsport Times-News*, 475 F. Supp. 1011.

5. What if a publisher censored news because it was damaging to his friends? If, as alleged in this case, the publisher refused to print news of two federal lawsuits filed against his friends, one by the Ohio Welfare Department because their wards were being withheld contrary to law by the owners of a privately-run orphanage, which fact petitioner made sure the publisher knew by bringing it to his attention personally; if the publisher refused to print news of several other lawsuits against the orphanage by ex-residents charging child abuse; if the publisher refused to print a cash-in-advance advertisement that would re-print verbatim a news account of the lawsuits against the orphanage reported by the *Bristol Herald-Courier*; if the publisher then refused to print an advertisement by the *Society to Offer Placements to Orphans* because it might compete with the local orphanage, a regular printing customer, by placing orphans in private homes; if the publisher claimed he had no room to print an orphan's letter to the editor asking fellow ex-residents to contact him regarding an investigation of the orphanage by the U.S. Attorney (while the publisher found room to print an ex-soldier's letter seeking the location of an old army buddy); if the publisher refused to print news that suits had been filed challenging the constitutionality of a state statute generally unknown to the public (which made the orphanage the only one in Virginia exempt from state welfare licensing, supervision and inspection); if the publisher, who printed the only newspaper in the county, went out of his way for at least eight years to propagandize the region about the good works of the orphanage while censoring everything adverse: did this advance society's interest in wide-open debate on public issues?

6. Petitioner contends the Supreme Court should find that a publisher should lose his First Amendment privilege if he covered up information of which it could be proved he had definite knowledge, and ordinarily would have printed, but did not, just to protect his friends. Petitioner contends there is a First Amendment duty for a publisher not to depart substantially from the public record, as per *Mills v. Kingsport Times-News*, to suppress news which the public has an overriding right to know.

7. If the publisher refused to print highly damaging admissions by the orphanage staff and conspired with them to cover up adverse news and impugn petitioner over an eight year period: did the publisher not have knowledge the defamation was false, and did he not proceed with reckless disregard of whether or not it was false when he printed defamatory statements and mis-leading half-truths about petitioner?

8. If none of the above acts imply malice, libel and conspiracy to cover up the truth; and if witnesses' testimony that petitioner was jailed falsely [for taking two orphans to a judge to complain] was not evidence of damage that resulted from respondents' conspiracy with the orphanage, then the publisher did not lose his privilege and did not impede the public's interest; and the jury was wrong and the trial court correct in setting aside the verdict of the jury.

9. Petitioner contends the question of press privilege being lost by malicious censorship has never been addressed by the Supreme Court, but should be.

10. "Truth is not only violated by falsehood, it may be equally outraged by silence." – Henry Amiel, 1821-1881.

11. Trial court's recollection of the testimony was inaccurate, and not supported by the record. The jury, which had access to the record, is the constitutionally-mandated tribunal to determine fact.

APPENDIX

THE TRIAL COURT'S RULING

"The Court is bound to follow the law as outlined by the Supreme Court of the United States. And the law which the Court is going to follow and has attempted to follow throughout this case is set out in *New York Times v. Sullivan, 84 S. Ct. 710 (1964)* and in *Curtis Publishing Co. v. Butts and Walker, 87 S. Ct. 1975 (1967)* and in *Gertz v. Welch, 94 S. Ct. 2997* and in *Time, Inc. v. Pape, 91 S. Ct. 633.*

"And first of all, I would like to cite and for the record read from *Time, Inc. v. Pape.* In this case throughout Mr. Bloch objected to the defendants not using the word 'alleged.' In *Time v. Pape* on page 639, the Supreme Court of the United States had this to say: "Time's omission of the word 'alleged' amounted to the adoption of one of a number of possible rational interpretations of the document that bristled with ambiguities. The deliberate choice of such an interpretation, though arguably reflecting a misconception, was not enough to create a jury issue of 'malice' under *New York Times v. Sullivan.*"

"In this case when the plaintiff closed his evidence, he did not present any evidence of damages. He requested permission to reopen the case and it was objected to and the Court would not permit him to do so. Therefore, there is no evidence of damage. And in Mr. Bloch's argument just now, it is very obvious that he was seeking to play upon the passion and sympathy of the jury by saying in his argument (which was not evidence) in which he said he had lost his mother, his plane and his house. He argued something which was not evidence. It should not have gone before the jury. But this plaintiff comes here as a pro se plaintiff and it makes one of the most difficult situations that a court can encounter or opposing counsel can encounter. There is a tendency on the part of juries to sympathize with someone who is handling his case on his own in favor of that person and against someone

who has an attorney. And if you will recall in his testimony, he said he filed one of the numerous suits he has filed throughout these United States, 'Johnny Dotson, pro se, against' every one from Governor Dalton down to the Commonwealth's Attorney and various other people in Buchanan County. He has come here obviously under the same guise, of coming pro se for tactical reasons. Let the record show that Mr. Bloch is an extremely intelligent man and has handled his case well, but has made it most difficult for this Court to deal with the many objections. It has made it most difficult for this defense counsel to object to the various tidbits of evidence which is offered. Now, the Court could have stricken the evidence at the conclusion of the plaintiff's evidence. The Court did not see fit to do so and did not do so. The Court could have stricken the evidence at the conclusion of all the evidence. The Court did not see fit to do so. The Court wants . . . this Court wanted a complete hearing in order that the record would be made up, in order that the necessary motions could be made in the other cases with the evidence before the courts in those cases. The Court is of the opinion that Mr. Bloch is out on a mission of harassment against the Mountain Mission School and I think the record will reflect that. And hopefully by spending six days or portions of six days (some on preliminary motions and four days before the jury) that the record is sufficiently made up so that other jurors and other courts will know what the record is and apply these facts and apply the law and hopefully will not have to endure the number of cases and the number of hours of time that must be devoted. There is no evidence of malice in this case. The Court let in all the evidence, as I have stated, for the simple reason that a complete record can be made up and hopefully the other cases can be adjudicated accordingly and with the benefit of that record. There is no evidence of knowledge on the part of the defendants of child abuse at the Mountain Mission School, if any existed. It was difficult for the Court in this case to separate the inadmissible evidence coming in with reference to Mountain Mission School because the real gist of the action goes

back to the criminal abduction charges on which Mr. Bloch was convicted. And during the course of this trial the Supreme Court of Virginia upheld that conviction on May 29th. In other words, it was before the trial started but it was not brought to the attention of the Court and the jury until either yesterday or today. Therefore the Court is of the opinion that the law of this country and the law of the Commonwealth of Virginia compels the Court to set aside the verdict of the jury. And in the case of *Curtis Publishing Co. v. Butts*, the Court said "freedom of speech and press is the indispensable condition of nearly every other form of freedom." To uphold this verdict would be to cause newspaper reporters and newspapers to be fearful of printing anything they heard in a courtroom. And I think the most important point in the entire case was brought out when Birg Sergent said the statement. . .the headline in the Virginia Mountaineer, "Attorney Testifies 'Children Touched' " was true. Now Mr. Bloch did not call Birg Sergent as an adverse witness. Mr. Bloch called Birg Sergent as his own witness. He cannot rise any higher than his own witness. His own witness said the headline was true, and when it was published by the Virginia Mountaineer, it relieved them of any liability. And the Court would like to cite another statement by the Supreme Court of the United States with reference to immunity from publishing what is stated in a judicial hearing. In *Curtis Publishing Co. v. Butts* the Court says, "Privilege pertaining to the reports of judicial proceedings is absolute." All the Virginia Mountaineer did was publish exactly what was in a judicial proceeding and under the holding of the United States Supreme Court in *Curtis Publishing Co. v. Butts*, privilege pertaining to reports of judicial proceedings is absolute. And in that same case, taking the testimony of Birg Sergent, the United States Supreme Court said, "Truth is an absolute defense in almost all libel and slander cases." And in this case the plaintiff, Mr. Bloch, called to the witness stand Birg Sergent and he proved the truth of the statement, that he actually said what was printed in the Virginia Mountaineer. For these reasons the Court is setting aside the verdict of the jury. Of

course, Mr. Bloch, you have the right to take the necessary steps for an appeal to the Supreme Court of Virginia."

JUDGMENT OF THE SUPREME COURT OF VIRGINIA

"Finding no reversible error in the judgment complained of, the court refuses the petition for appeal filed in the above-styled case." Dated June 24, 1982, rehearing denied Sept. 9, 1982.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing petition for writ of certiorari to the Supreme Court of Virginia was mailed to all counsel of record on October 1, 1982.

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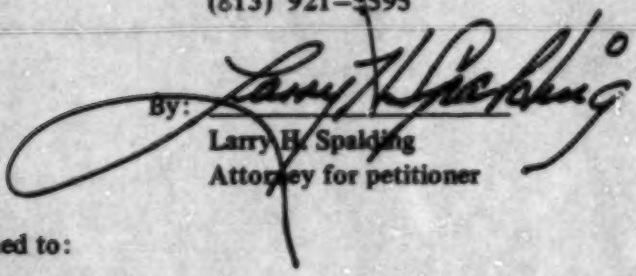

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LODGE COMPTON,
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RESPONDENTS

RESPONDENTS' BRIEF IN OPPOSITION

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14 Michie's Jurisprudence, Pleadings (1951) 7

RULE

Rule 17, U.S. Supreme Court Rules 4

STATEMENT OF THE CASE

Petitioner herein seeks review of a judgment rendered in the Circuit Court of Dickenson County, Virginia, setting aside a jury verdict in petitioner's favor and entering judgment in favor of the respondents (defendants below) dismissing the case. The action arises out of the publication in the *Virginia Mountaineer*, a small, local, weekly newspaper printed in Grundy in neighboring Buchanan County, Virginia, of an article summarizing developments in a judicial proceeding involving the petitioner. Based on that article, petitioner sought damages in the amount of one million dollars, alleging "false, malicious, slanderous, libelous and insulting statements, published with actual malice".

On January 26, 1974, petitioner abducted two young boys, Johnny Lee Dotson and Robert Watts, who were students at the Mountain Mission School, an orphanage in Grundy, and flew them in his private airplane to Florida, where he had previously resided. Petitioner obtained a Court Order there granting him custody of those two boys, and then returned with the boys to his home in Ohio where he was arrested on February 1, 1974, on charges of abduction brought by the school officials. Petitioner now claims that he removed the boys from the school to protect them from child abuse. The school officials contend, on the other hand, that his motives were otherwise, based upon reports from the two boys that Bloch had taken indecent liberties with them. On May 27, 1975, following a lengthy conference with his attorneys, Bloch pleaded guilty in the Circuit Court of Buchanan County to abducting both boys; and, on September 25, 1975, he was sentenced by Judge Nicholas E. Persin to 10 years in the state penitentiary, execution of which was suspended upon condition that petitioner serve six months in the county jail and comply with various other terms and conditions.

On October 8, 1979, petitioner filed a motion for post-conviction relief in the Buchanan County Circuit Court,

seeking an order vacating his conviction on the grounds that (a) newly discovered evidence disclosed that two witnesses had perjured themselves, (b) petitioner's guilty plea had been coerced by his attorneys, Edward Sawyer of Florida and Birg Sergeant of Virginia, and (c) he had received ineffective assistance of counsel. Thereafter, on February 21 and 22, 1982, petitioner offered evidence from his witnesses in support of his application. On March 28, 1980, a third hearing was conducted, during which the Commonwealth presented its evidence. Petitioner's motion was eventually denied by Judge Persin on September 5, 1980; and his petition for appeal from that decision was refused by order of the Supreme Court of Virginia dated May 29, 1981. The instant libel suit arises out of an article published on April 3, 1980, reporting developments in the prosecution's hearing on March 28th.

Petitioner, appearing pro se, pleaded below that the article omitted the testimony of certain witnesses favorable to his position and thus it was slanted and biased in such a way as to mislead the average reader, thereby rendering the article false. Secondly, petitioner claimed that he was defamed by a headline composed by respondent Lodge Compton summarizing what Mr. Compton believed to be the major development during the hearing in question: namely the previously undisclosed reason why Bloch's attorneys had advised him to plead guilty in 1975 (i.e., the anticipated "devastating" effect of statements by the boys that they had been "touched" by Bloch during the abduction). The headline, it is said, imputes to petitioner's attorney personal knowledge that the boys had been touched, whereas he was in truth only restating what the children had told him. Finally, Bloch alleged that the statement in the article that his attorney's advice was based on an "interview" of the boys (as opposed to a brief conversation) was also false.

Thereafter, on motion of petitioner, Judge Persin (who had presided at his criminal proceedings) excused himself and the case was transferred to Judge Glynn Phillips, who

in turn, again on motion by the petitioner, changed venue to Dickenson County Circuit Court to assure the availabilty of jurors who would not be prejudiced in any way by pretrial publicity.

Meanwhile, in addition to this action, petitioner commenced a number of other lawsuits in Virginia, Ohio, and elsewhere, seeking relief in his own right and on behalf of others against Mountain Mission School and a wide variety of other individuals. For example, he filed suit in the United States District Court for the Western District of Virginia, on June 11, 1979, along with Johnny Dotson, seeking to vacate his abduction conviction and in addition alleging damages in the amount of one hundred million dollars for harm to health and reputation against some forty-three defendants including, (a) the Mountain Mission School, its officers and directors, four teachers, and a physician, (b) Judge Persin, (c) the Commonwealth Attorney and Special Prosecutor who handled the abduction indictments; (d) the Attorney General of Virginia, the Attorney General of the United States, and the Director of the Federal Bureau of Investigation; (e) petitioner's two attorneys who represented him at the time he pleaded guilty; (f) various members of the probation and welfare departments of Ohio, Florida, and Pennsylvania; and (g) miscellaneous others.

Furthermore, the petitioner has also applied to the Governor of the Commonwealth of Virginia, John B. Dalton, for a pardon; and he has approached various state and federal authorities, requesting investigation and prosecution of Mountain Mission School and others alleged to have conspired against him, all without success. In fact, just prior to trial below, Judge Phillips denied an application by Bloch to convene a special grand jury. Trial herein then commenced on June 3, 1981, resulting in the jury verdict which the trial court promptly set aside on the ground, inter alia, that absolutely no proof had been offered to show that respondents knew that the publication was false or entertained any doubt as to its truth.

ARGUMENT

POINT 1

The state courts below did not decide any question of law which has not been settled by this Court.

Petitioner contends - as he must (see Rule 17, U.S. Sup. Ct. Rules) - that the trial court below, in setting aside the jury verdict herein, decided an important question of federal law which has not been, but should be, settled by this Court. On the contrary, however, the decision now under review (quoted in the Appendix to the petition at bar) clearly demonstrates that Judge Phillips applied the principles of libel law set forth in *New York Times v. Sullivan*, 376 U.S. 254, 11 L.Ed. 2nd 686, 84 S. Ct. 710, 95 A.L.R.2d 1412 (1963) and its progeny: namely that a public figure* may recover under these circumstances only upon

> ". . . a showing that a false publication was made with a 'high degree of awareness of . . . probable falsity . . . . These cases are clear that reckless conduct is not measured by whether a reasonably prudent man would have published, or would have investigated before publishing. There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication." *Time, Inc.* v. *Pape*, 401 U.S. 279, 291-92, 28 L.Ed.2d 45, 54, 91 S. Ct. 633 (1971).

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*Petitioner suggests (petition, question for review 1a, p. 1) that his status as a public figure resulted from fraudulent publicity. Respondents, on the other hand, contend that he thrust himself to the forefront of a public controversy which he himself created by abducting the boys and then sustained by his efforts (for whatever purpose) to "blow the whistle" on child abuse. In any event, he made no objection to the careful jury instructions, applicable to a public figure, which required clear and convincing proof of knowledge of falsity or reckless disregard for the truth. See e.g., Instruction No. 4, Appendix hereto.

In that case, plaintiff Pape argued that the omission of important facts by the publisher constituted malicious falsehood, just as petitioner herein relies upon his theory of omission by "malicious censorship." This Court deliberated the very point which petitioner argues has not been considered, and held as follows:

> "In light of the totality of what was said in Justice (the report relied upon by the publisher therein), we cannot agree that when Time failed to state that the Commission in reporting the Monroe incident had technically confined itself to the allegations of a complaint, Time engaged in a 'falsification' sufficient in itself to sustain a jury finding of 'actual malice'." *Id.*, 401 U.S. at 289, 28 L.Ed.2d at 53.

> "Time's omission of the word 'alleged' amounted to the adoption of one of a number of possible rational interpretations of a document that bristled with ambiguities. The deliberate choice of such an interpretation, though arguably reflecting a misconception, was not enough to create a jury issue of 'malice' under New York Times." *Id.*, 401 U.S. at 290, 28 L.Ed.2d at 53.

The Court went on to hold that knowing alteration of the wording in the report relied upon, and intentionally restating as facts what were only allegations in the source, did not create a jury issue as to malice. Precisely the same conclusion was reached by the trial court below under the evidence in this case - "There is no evidence of malice in this case" (Appendix to petition at p. 11) - applying and quoting the very principles which Petitioner argues have not been decided by this Court. Making an independent examination of the whole record, Judge Phillips in effect held that the evidence in the record could not constitutionally support a judgment for petitioner, *Time, Inc.* v. *Pape*, *supra*, 401 U.S. at 284, 28 L.Ed.2d at 50.

POINT 2

The issue of conspiracy was not raised at trial

Petitioner's Motion for Judgment (Virginia's equivalent to a "complaint" in federal practice) alleges that "the published material (involved herein) was malicious and per se slanderous and libelous." (See par. 7 of Appendix annexed hereto.) In addition to this pleading, the record below contains answers by petitioner to extensive interrogatories, transcripts of two depositions by petitioner, and many affidavits sworn to by him in support of various applications. Nowhere in any of those voluminous papers does the word "conspiracy" appear. On the contrary, petitioner himself admitted that this lawsuit was based solely on the theory of libel. At his oral examination upon deposition conducted January 22, 1981, petitioner testified as follows:

> "Q. What is the basis of your lawsuit here, the entire basis of your law suit?"
> "A. Well, I have alleged injuries to my mental well-being and etc. as a result of the libelous statements made against me and the injuries, the psychological injuries which I suffered as a result."
> "Q. Of the libelous statement?"
> "A. Yes".

On June 2, 1981, the day before trial, petitioner sought for the first time to amend his pleadings to assert a second cause of action pleading conspiracy. When the court indicated that the amendment would be conditioned upon a continuance to permit discovery into that issue, petitioner withdrew his motion; and the case went to trial solely on the issue of defamation. No jury instructions dealing with conspiracy were requested, and none were given.

As a result that theory was not properly before the jury for decision, and may not be raised now in this Court.

> "There can be no judgment or decree without pleadings and points not raised in the pleadings cannot be considered by the court . . . . Likewise, evidence without proper pleading will not support a verdict." 14 Michie's Jurisprudence, Pleadings, Sec. 3 at 442 (1951).
>
> "The plaintiff will be limited to the issues presented by the pleadings. The defendant must put in or file his plea, and the record must show this fact and the character of the plea on which the issue is joined. Otherwise, the verdict should be set aside." *Id.*, Sec. 4 at 443.

POINT 3

Petitioner has not suffered compensable damages

The motivation underlying this lawsuit is best illustrated by the Motion for Judgment which pleads that the respondents' alleged practice of "highly biased and unfair reporting" (par. 4, Appendix), by which they are said to have "tried to cover up facts favorable to the Plaintiff (petitioner)" *(Ibid)*, "have made it impossible for the Plaintiff to obtain an impartial, fair jury panel" *(Id.*, par. 5). He charges that the news article herein was " . . .willfully designed by the Defendants to discredit the Plaintiff in his profession and in his legal pleadings for redress of grievances before a jury" *(Id.*, par. 7), thereby denying him ". . . the right to have his sentence vacated and obtain other relief" *(Id.* par. 6). The record shows, however, that Bloch never went before a jury concerning his sentence and his conviction became final, if not many years ago, then certainly on May 29, 1981, when the Virginia Supreme Court affirmed the denial of

his application for post-conviction relief. There surely can be no suggestion that the Dickenson County jury which rendered the verdict below was tainted by any conduct on the part of these respondents. That aspect of petitioner's claim is totally spurious.

Petitioner's claim of pecuniary harm is equally unsupportable. He pleaded no pecuniary damages; and although he argued in an emotional summation that he had lost, among other things, his mother, nevertheless he offered absolutely no evidence of special damages, pecuniary or otherwise. That failure of proof is fatal to his case. *Fleming* v. *Moore*, 221 Va. 884, 275 S.E.2d 632 (1981); *Shupe* v. *Rose's Stores*, 213 Va. 374, 192 S.E.2d 766 (1972); *Weaver* v. *Beneficial Finance Co., Inc.*, 200 Va. 572, 106 S.E.2d 620 (1959). As a former resident of Florida who resided in Ohio at the time he abducted the boys, and as a resident of Florida again at the time he commenced the instant lawsuit, who has never been domiciled anywhere in Virginia, he cannot seriously contend that he suffered any compensable harm from this purely local newspaper publication.

This petitioner (the convicted abductor of two young boys) presented himself before the jury as a "whistleblower" seeking to expose child abuse at Mountain Mission School, and was permitted over repeated objections* to introduce substantial, highly inflammatory evidence of neglect and mistreatment, all of which was vehemently denied by the school. Asserting his rights under the First Amendment of the United States Constitution, petitioner now urges this Court to reinstate the verdict against these respondents who were themselves exercising their First Amendment freedoms. That

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*Respondents moved *in limine* to suppress such testimony and objected to it thereafter as irrelevant and inflammatory; and counsel for Mountain Mission School appeared specially and moved for similar relief on the ground that the school was not a party and was not present to defend itself.

verdict was squarely and irreconcilably contrary to the trial court's unchallenged instructions and was plainly the product of passion and sympathy. The trial court's judgment setting that verdict aside was proper; and your respondents respectfully request that the judgments below, in the trial and appellate courts, both on original applications and upon motions for reconsideration, not be disturbed.

Respectfully submitted,

Mountaineer Publishing Co., Inc.
Lodge Compton
Rachel Riggsby
Respondents

By Counsel

Daniel K. Read
Attorney for Respondents
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(703) 935-4567

APPENDIX

IN THE CIRCUIT COURT FOR BUCHANAN COUNTY, VIRGINIA

DANIEL F. BLOCH,

Plaintiff

CASE NO.

v

MOUNTAINEER PUBLISHING CO., INC.,
LODGE COMPTON, Editor-Publisher,
RACHEL RIGGSBY, News-Editor

Defendants

MOTION FOR JUDGEMENT

COMES NOW the Plaintiff, Daniel F. Bloch, and moves for judgement against the above-named Defendants on grounds and in the amount hereinafter set forth:

1. Plaintiff is an upstanding and honest citizen of Sarasota, Florida who has for many years enjoyed a good reputation among members of his community.

2. Defendants are a Corporation, its Editor-Publisher and its News-Editor. The Corporation was organized and is doing business under the laws of the State of Virginia having offices at 105 Main Street, Grundy, Virginia, and is the publisher and owner of a certain weekly newspaper known as "The Virginia Mountaineer," which newspaper is circulated by the Defendant Corporation generally and extensively throughout the City of Grundy and the State of Virginia. The Editor-Publisher and the News-Editor are individuals residing in or near the City of Grundy, Virginia. All Defendants have their principal business office or residence in Buchanan County, Virginia.

3. On April 3, 1980 the Defendants did, with actual malice, compose, publish and circulate in said newspaper an article containing certain false, scandalous and defamatory matter of and concerning the Plaintiff, as follows:

a. A headline stating "Attorney Testifies Children Touched" is untrue.

b. The statement that the Plaintiff's attorneys "interviewed" two boys is misleading and therefore false as to its intent and meaning.

c. The word "allegedly" is glaringly missing in most of the article, and its omission is deliberately calculated to mislead the readers of the newspaper into drawing a false conclusion.

d. The admission by both William Drake and Charles Sublett, that Charles Sublett refused to heed a Court Order allowing the Plaintiff to interview Johnny Dotson was deliberately omitted, as was Charles Sublett's claim of a superseding Court Order.

e. The claim by Charles Sublett and James Swiney that they did not talk to Johnny Dotson *at all* about the case for more than a year and a half prior to the 1975 trial of the Plaintiff was omitted.

f. The fact that Charles Sublett impeached his son-in-law, James M. Swiney, in his sworn testimony about where Johnny Dotson was required to live prior to the 1975 trial of the Plaintiff for allegedly "abducting" Johnny Dotson was omitted.

g. The fact that Charles Sublett, by his own sworn testimony, impeached his daughter, Mrs. James Swiney, about the allegedly "ordinary way" Johnny Dotson was treated at the Mountain Mission School was omitted.

h. The fact that Mrs. James Swiney admitted, under oath, that she beat Johnny Dotson with a leather belt was omitted.

i. The alleged excuse of Mrs. James Swiney for beating Johnny Dotson was omitted.

j. The credibility of Johnny Dotson, a witness for the

Plaintiff, was therefore omitted, as was his understandable explanation of why, as a mere twelve year old child, he was terrorized into lying; and that he knew that beatings with belts were part of the practices of the Mountain Mission School staff.

1. The highly biased slant of the entire front page article revolved around alleged "touching," and the refusal to print damaging testimony by the Mountain Mission School officials themselves about each other constitutes a serious breach of the true facts that was calculated to mislead the readers of the newspaper.

4. The Defendants sometimes practice a highly biased and unfair reporting of the news calculated to mislead the newspapers' readers. The Defendants have distorted the news they did print in order to favor local citizens of prominence; they have omitted other news damaging to local citizens of prominence; and they have knowingly and deliberately censored, by refusing to print, news of lawsuits filed against the Mountain Mission School and other local officials which other newspapers published. The Defendants, by the omissions and distortions, have tried to cover up facts favorable to the Plaintiff and therefore have damaged him.

5. The Defendants, by these practices, have made it impossible for the Plaintiff to obtain an impartial, fair jury panel to hear his case in southwest Virginia.

6. The clear implication of the above-quoted material is that the Plaintiff was guilty of improper conduct and that he ought to be denied the right to have his sentence vacated and obtain other relief.

7. The above-quoted material was published by the Defendants with actual malice, that is, with full knowledge that it was false or with reckless disregard of whether or not it was false. It was willfully designed by the Defendants to discredit the Plaintiff in his profession and in his legal pleadings for redress of grievances before a jury. As such the published material was malicious and per se slanderous and libelous. Statements such as these contained

in the above-quoted material are, from their usual construction and common usage, construed as insults and tend toward violence and breach of the peace.

8. As a proximate result of the forementioned false, malicious, slanderous, libelous and insulting statements, published with actual malice by the Defendants, the Plaintiff has been caused to suffer great mortification, humiliation, shame, vilification, exposure to public infamy, scandal and disgrace, injury to his good reputation, harm in the conduct of his business affairs, and financial loss, and has been and will forever be hampered in his business, all in that plaintiff has been falsely imputed to have conducted himself in the manner set forth in the Defendants' newspaper article. Much of this injury will endure permanently.

WHEREFORE, Plaintiff Daniel F. Bloch demands Judgement against Defendant MOUNTAINEER PUBLISHING CO., INC., Defendant LODGE COMPTON, and Defendant RACHEL RIGGSBY in the amount of One Million Dollars ($1,000,000.00) representing Five Hundred Thousand Dollars ($500,000.00) compensatory damages and Five Hundred Thousand Dollars($500,000.00) punitive damages, and his costs in this behalf expended.

Respectfully submitted,

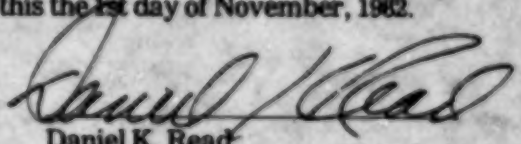
Daniel F. Bloch, Pro Se
201 Pearl Avenue
Sarasota, Florida 33580
Tel. 813-355-1048

INSTRUCTION NO. 4

Because of the constitutional protection afforded to newspapers in reporting to the public about matters of general interest or concern, the law imposes upon the plaintiff in this case the burden to establish, by clear and convincing proof, that the statements about which plaintiff complains in this action were indeed substantially and materially false, and further, that the defendant newspaper, at the time of publication, had actual knowledge that the statements were false, or that the newspaper either entertained serious doubts as to the truth of the statements or possessed a high degree of awareness of their probable falsity.

CERTIFICATE OF SERVICE

I certify that three copies of the foregoing Brief in Opposition were mailed to Petitioner herein, by counsel, Larry H. Spalding, Esq., Lewis & Spalding, 6624 Gateway Avenue, Sarasota, Fla. 33581, on this the 1st day of November, 1982.



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